



## 2222-CC09336 - PHILLIP BERRY V ST. LOUIS PUBLIC SCHOOLS (E-CASE)

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03/27/2023	<input type="checkbox"/> <a href="#">Order</a>	THEREFORE, it is Ordered and Decreed that Defendant's motion to strike is GRANTED without prejudice as to all of the MHRA claims. The motion is DENIED as to the Title VII and ADEA claims SO ORDERED JUDGE JASON M. SENGHEISER #55132	
02/22/2023	<input type="checkbox"/> <a href="#">Jury Trial Scheduled</a>	Scheduled For: 04/17/2023; 9:00 AM ; ELIZABETH BYRNE HOGAN; City of St. Louis	
	<input type="checkbox"/> <a href="#">Hearing Continued/Rescheduled</a>	Hearing Continued From: 02/27/2023; 9:00 AM Jury Trial	
01/24/2023	<input type="checkbox"/> <a href="#">Suggestions in Opposition</a>	DEFENDANT ST. LOUIS PUBLIC SCHOOL'S OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED PETITION; Electronic Filing Certificate of Service. Filed By: MELANIE ANN RENKEN On Behalf Of: ST. LOUIS PUBLIC SCHOOLS	
01/10/2023	<input type="checkbox"/> <a href="#">Motion for Leave</a>	Motion for Leave; Electronic Filing Certificate of Service. Filed By: JERRY THOMAS CHRISTMAS On Behalf Of: PHILLIP BERRY	
	<input type="checkbox"/> <a href="#">Note to Clerk eFiling</a>	Filed By: MELANIE ANN RENKEN	
	<input type="checkbox"/> <a href="#">Amended Notice of Hrng Filed</a>	Amended Notice of Hearing for Virtual Hearing - 2222-09336 Berry v SLPS; Electronic Filing Certificate of Service. Filed By: MELANIE ANN RENKEN	
01/03/2023	<input type="checkbox"/> <a href="#">Notice of Hearing Filed</a>	Notice of Hearing; Electronic Filing Certificate of Service. Filed By: MELANIE ANN RENKEN On Behalf Of: ST. LOUIS PUBLIC SCHOOLS	
12/21/2022	<input type="checkbox"/> <a href="#">Motion to Strike</a>	MOTION TO STRIKE AMENDED PETITION.PDF; Electronic Filing Certificate of Service. Filed By: MELANIE ANN RENKEN On Behalf Of: ST. LOUIS PUBLIC SCHOOLS	
12/19/2022	<input type="checkbox"/> <a href="#">Amend Pet/Mot to Modfy Filed</a>	Amended Petition; Electronic Filing Certificate of Service. Filed By: JERRY THOMAS CHRISTMAS On Behalf Of: PHILLIP BERRY	
10/06/2022	<input type="checkbox"/> <a href="#">Entry of Appearance Filed</a>	Entry of Appearance; Electronic Filing Certificate of Service. Filed By: MELANIE ANN RENKEN On Behalf Of: ST. LOUIS PUBLIC SCHOOLS	
	<input type="checkbox"/> <a href="#">Entry of Appearance Filed</a>	Entry of Appearance; Electronic Filing Certificate of Service. Filed By: MELANIE ANN RENKEN	
	<input type="checkbox"/> <a href="#">Memorandum Filed</a>	Filed By: MELANIE ANN RENKEN	
	<input type="checkbox"/> <a href="#">Motion to Dismiss</a>	Motion to Dismiss Plaintiffs Amended Petition; Electronic Filing Certificate of Service. Filed By: MELANIE ANN RENKEN	
09/13/2022	<input type="checkbox"/> <a href="#">Corporation Served</a>	Document ID - 22-SMCC-12024; Served To - ST. LOUIS PUBLIC SCHOOLS; Server - B JONES, SERVICE DEPUTY; Served Date - 12-SEP-22; Served Time - 08:40:00; Service Type - Sheriff Department; Reason Description - Served; Service Text - KARLLA S DOZIER/DIRECTOR OF EMPLOYEE RELATIONS	
09/06/2022	<input type="checkbox"/> <a href="#">Jury Trial Scheduled</a>	Associated Entries: 02/22/2023 - Hearing Continued/Rescheduled Scheduled For: 02/27/2023; 9:00 AM ; ELIZABETH BYRNE HOGAN; City of St. Louis	
08/30/2022	<input type="checkbox"/> <a href="#">Amend Pet/Mot to Modfy Filed</a>	Amended Petition. Filed By: JERRY THOMAS CHRISTMAS On Behalf Of: PHILLIP BERRY	
08/29/2022	<input type="checkbox"/> <a href="#">Summons Issued-Circuit</a>	Document ID: 22-SMCC-12024, for ST. LOUIS PUBLIC SCHOOLS.	

08/24/2022

☐ Judge Assigned

☐ Confid Filing Info Sheet Filed

Filed By: JERRYL THOMAS CHRISTMAS

☐ [Pet Filed in Circuit Ct](#)

Petition.

Filed By: JERRYL THOMAS CHRISTMAS

On Behalf Of: PHILLIP BERRY

**IN THE CIRCUIT COURT OF ST. LOUIS CITY  
22ND JUDICIAL CIRCUIT  
STATE OF MISSOURI**

PHILLIP A. BERRY

Plaintiff,

vs.

ST. LOUIS PUBLIC SCHOOLS

SERVE: KELVIN ADAMS

Superintendent

801 N. Eleventh St.

St. Louis, MO 63101

Defendant.

Cause No:

Division No:

**PETITION  
DISCRIMINATION UNDER  
THE MISSOURI HUMAN RIGHTS ACT**

COMES NOW Plaintiff, by and through counsel and for his Petition against ST.

LOUIS PUBLIC SCHOOLS, ("Defendant"), states and alleges as follows:

**Jurisdiction And Venue**

1. This action arises under Missouri Human Rights Act, Mo Rev. Stat. §§

213.010- §§ 213.126 (hereinafter referred to as "MHRA").

2. The unlawful employment practices complained of herein were committed in St. Louis, Missouri.
3. Plaintiff PHILLIP A. BERRY is a Black Male resident of Missouri, over the age of Forty and a former employee of Defendant.
4. Defendant ST. LOUIS PUBLIC SCHOOLS is a domestic general assembly organized and existing under the laws of the State of Missouri and was Plaintiff's former employer and an employer as defined under the MHRA.
5. At all times material to this action, Defendant has engaged in an industry affecting commerce and had six or more employees for each working day of twenty or more calendar weeks.

#### **Administrative Procedures**

6. On October 1, 2021 Plaintiff timely filed a Charge of Discrimination with the Missouri Commission on Human Rights ("MCHR").
7. Thereafter, Plaintiff received a Notice of Right to Sue from the MCHR, dated May 24, 2022 and has initiated this action within ninety (90) days of the date of the notice.

#### **Facts Common to All Counts**

8. Plaintiff was a full time employee for Defendant at AESM Middle School at L'Ouverture.



9. Plaintiff was employed as Family Community Specialist for Defendant.
10. Plaintiff was employed by the Defendant for Sixteen (16) years.
11. Plaintiff never received an unsatisfactory evaluation.
12. Plaintiff was the only Black Male employed as a Family Community Specialist in the Building.
13. On March 3, 2021 Plaintiff was advised a White Female Staff member made a report that Plaintiff inappropriately touched a female student.
14. The White Female Staff member reported this happened in February of 2019.
15. The White Female Staff member did not know what day of the month in February of 2019 this occurred.
16. The White Female Staff member reported a 14 year old Female student reported this incident to her.
17. A Black Female Human Resource Officer requested to interview Plaintiff.
18. Plaintiff appeared for the interview and requested Legal representation.
19. The Black Female Human Resource Officer declined his request.
20. The Black Female Human Resource Officer slapped her hands together at Plaintiff and began to demean, intimidate and belittle Plaintiff.

21. The Black Female Human Resource Officer created a hostile environment for the Plaintiff as compared to similarly situated female, White younger co-workers.
22. The Black Female Human Resource Officer harassed Plaintiff as compared to similarly situated female, White younger co-workers.
23. Plaintiff denied ever having any inappropriate contact with the 14 year old Female student.
24. The accusation was reported to the Missouri Department of Social Services on March 2, 2021.
25. Plaintiff was placed on administrative leave on March 3, 2021.
26. On April 5, 2021 Plaintiff was terminated.
27. On April 8, 2021 The Missouri Department of Social Services issued their report.
28. The Missouri Department of Social Services interviewed the Plaintiff, Staff Members, Students and the Alleged Victim.
29. No one including the alleged victim indicated Plaintiff touched or said anything inappropriate to a student.
30. The Missouri Department of Social Services determined the allegation was unsubstantiated.

31. Defendant created, fostered, promoted a hostile work environment in which Plaintiff as compared to similarly situated Female younger White co-workers was discriminated against and treated unfairly, more harshly, and less favorably with respect to his terms, conditions and privilege of employment.

**Unlawful Employment Practice (Sex Discrimination)  
In Violation of MHRA §213.055 R.S.Mo.**

32. Plaintiff incorporates and re-alleges paragraphs 1-31 and for his MHRA sex discrimination in employment claim against Defendant states and alleges as follows:

33. Defendant discriminated against Plaintiff with respect to his privileges of employment by creating, fostering, promoting and allowing to exist a hostile, offensive and intimidating work environment.

34. Defendant unfairly disciplined Plaintiff as compared to his female co-workers.

35. Defendant Discharged Plaintiff.

36. Plaintiff's sex was a contributing and motivating factor in Defendant's unfair discipline of Plaintiff compared to his female co-workers.

37. Plaintiff's sex was a contributing and motivating factor in Defendants discharge of Plaintiff.



38. As a direct and proximate result of Defendants actions, Plaintiff has suffered damages, including but not limited to, lost income and benefits, future wages and earnings, and suffered emotional and mental distress, embarrassment, humiliation, and loss of enjoyment of life, all to Plaintiff's damage and detriment.
39. Defendants actions complained of herein were outrageous because of Defendants evil motive or reckless indifference to the rights of Plaintiff, thereby entitling Plaintiff to an award of punitive damages in an amount that will punish Defendants and will deter Defendants and others from like conduct.
40. Plaintiff is entitled to, and prays for, equitable relief in the form of reinstatement of employment or in the alternative, front pay, under the MHRA, §213.111.2 R.S.Mo.

**WHEREFORE**, Plaintiff prays for Judgment against Defendant on his Petition and awarding: (i) compensatory damages in an amount the jury deems fair and reasonable in excess of \$25,000.00 according to proof at trial; (ii) separate punitive damages awards against the Defendant in such amounts as the jury deems just, proper and sufficient to punish the Defendant and to deter like future conduct; (iii) for reinstatement of employment or, in the alternative, front pay; (iv) for his attorneys fees and

costs of suit; and (v) such other and further relief as the Court deems just and proper under the circumstances.

Respectfully Submitted,

**By:/s/Jerryl T. Christmas**

Jerryl T. Christmas, #45370  
Attorneys for Plaintiff  
6101 Delmar Blvd  
Saint Louis, Missouri 63112  
Phone: 314-588-7105  
Fax : 314-361-2525



IN THE 22ND JUDICIAL CIRCUIT, CITY OF ST LOUIS, MISSOURI

Judge or Division: MICHAEL FRANCIS STELZER	Case Number: 2222-CC09336	
Plaintiff/Petitioner: PHILLIP BERRY	Plaintiff's/Petitioner's Attorney/Address JERRYL THOMAS CHRISTMAS 6101 DELMAR BLVD SUITE A, 2ND FLOOR SAINT LOUIS, MO 63112	
Defendant/Respondent: ST. LOUIS PUBLIC SCHOOLS	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101	
Nature of Suit: CC Employmnt Discrmntn 213.111	Please see the attached information for appearing via WebEx. WebEx connection information may also be found at <a href="http://www.stlcitycircuitcourt.com/">http://www.stlcitycircuitcourt.com/</a>	
		(Date File Stamp)

Summons in Civil Case

The State of Missouri to: **ST. LOUIS PUBLIC SCHOOLS**  
Alias:

KELVIN ADAMS  
SUPERINTENDENT  
801 N ELEVENTH ST  
ST. LOUIS, MO 63101

**SHERIFF'S FEE PAID**

**COURT SEAL OF**  
  
**CITY OF ST LOUIS**

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

\*\*\*Due to COVID19 challenges, virtual appearances by Webex.com are also required until further order of this Court. \*\*\*

If you have a disability requiring special assistance for your court appearance, please contact the court at least 48 hours in advance of scheduled hearing.

**August 29, 2022**

Date Clerk

Further Information:

Sheriff's or Server's Return

**Note to serving officer:** Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above Summons by: (check one)

- ☐ delivering a copy of the summons and petition to the defendant/respondent.  
☐ leaving a copy of the summons and petition at the dwelling house or usual place of abode of the defendant/respondent with \_\_\_\_\_, a person at least 18 years of age residing therein.  
☐ (for service on a corporation) delivering a copy of the summons and petition to: \_\_\_\_\_ (name) \_\_\_\_\_ (title).  
☐ other: \_\_\_\_\_

Served at \_\_\_\_\_ (address)  
in \_\_\_\_\_ (County/City of St. Louis), MO, on \_\_\_\_\_ (date) at \_\_\_\_\_ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

**Must be sworn before a notary public if not served by an authorized officer:**

(Seal)

Subscribed and sworn to before me on \_\_\_\_\_ (date).

My commission expires: \_\_\_\_\_



**Sheriff's Fees, if applicable**

Summons \$ \_\_\_\_\_

Non Est \$ \_\_\_\_\_

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00 \_\_\_\_\_

Mileage \$ \_\_\_\_\_ (\_\_\_\_\_ miles @ \$.\_\_\_\_\_ per mile)

**Total** \$ \_\_\_\_\_

A copy of the summons and petition must be served on **each** defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

**IN THE CIRCUIT COURT OF ST. LOUIS CITY  
22ND JUDICIAL CIRCUIT  
STATE OF MISSOURI**

PHILLIP A. BERRY

Plaintiff,

vs.

ST. LOUIS PUBLIC SCHOOLS

SERVE: KELVIN ADAMS

Superintendent

801 N. Eleventh St.

St. Louis, MO 63101

Defendant.

Cause No:

Division No:

**AMENDED PETITION**  
**DISCRIMINATION UNDER**  
**THE MISSOURI HUMAN RIGHTS ACT**

COMES NOW Plaintiff, by and through counsel and for his Petition against  
ST. LOUIS PUBLIC SCHOOLS, ("Defendant"), states and alleges as follows:

**Jurisdiction And Venue**

1. This action arises under Missouri Human Rights Act, Mo Rev. Stat.

§§ 213.010- §§ 213.126 (hereinafter referred to as "MHRA").

2. The unlawful employment practices complained of herein were committed in St. Louis, Missouri.
3. Plaintiff PHILLIP A. BERRY is a Black Male resident of Missouri, over the age of Forty and a former employee of Defendant.
4. Defendant ST. LOUIS PUBLIC SCHOOLS is a domestic general assembly organized and existing under the laws of the State of Missouri and was Plaintiff's former employer and an employer as defined under the MHRA.
5. At all times material to this action, Defendant has engaged in an industry affecting commerce and had six or more employees for each working day of twenty or more calendar weeks.

#### **Administrative Procedures**

6. On October 1, 2021 Plaintiff timely filed a Charge of Discrimination with the Missouri Commission on Human Rights ("MCHR").
7. Thereafter, Plaintiff received a Notice of Right to Sue from the MCHR, dated May 24, 2022 and has initiated this action within ninety (90) days of the date of the notice.

#### **Facts Common to All Counts**

8. Plaintiff was a full time employee for Defendant at AESM Middle School at L'Ouverture.

9. Plaintiff was employed as a Family Community Specialist for Defendant.
10. Plaintiff was employed by the Defendant for Sixteen (16) years.
11. Plaintiff never received an unsatisfactory evaluation.
12. Plaintiff was the only Black Male employed as a Family Community Specialist in the Building.
13. Plaintiff was treated differently in the terms and conditions of his employment because of his age, sex and race when he was discharged.
14. On March 3, 2021 Plaintiff was advised a White Female Staff member made a report that Plaintiff inappropriately touched a female student.
15. The White Female Staff member reported this happened in February of 2019.
16. The school does have cameras but there is no footage for the time period in question.
17. The White Female Staff member did not know what day of the month in February of 2019 this occurred.
18. The White Female Staff member reported a 14 year old Female student reported this incident to her.
19. A Black Female Human Resource Officer requested to interview Plaintiff.
20. Plaintiff appeared for the interview and requested legal representation.
21. The Black Female Human Resource Officer declined his request.



22. The Black Female Human Resource Officer slapped her hands together at Plaintiff and began to demean, intimidate and belittle Plaintiff.
23. The Black Female Human Resource Officer created a hostile environment for the Plaintiff as compared to similarly situated female, White and younger co-workers.
24. The Black Female Human Resource Officer harassed Plaintiff as compared to similarly situated female, White and younger co-workers.
25. Plaintiff denied having any inappropriate contact with the 14 year old Female student.
26. The Defendant reported the accusation to the Missouri Department of Social Services on March 2, 2021.
27. The Missouri Department of Social Services opened an investigation into the accusations against Plaintiff.
28. Plaintiff was placed on administrative leave on March 3, 2021.
29. Defendant discharged Plaintiff on April 5, 2021, for alleged policy violations that were simply a pretext for the discrimination.
30. On April 8, 2021 The Missouri Department of Social Services issued a report on their findings.
31. The Missouri Department of Social Services interviewed the Plaintiff, Multiple Staff Members, Multiple Students and the Alleged Victim.

32. No one including the alleged victim indicated Plaintiff touched or said anything inappropriate to the student in question or any other student.
33. The Missouri Department of Social Services determined the allegation were unsubstantiated.
34. Defendant created, fostered, promoted a hostile work environment in which Plaintiff as compared to similarly situated Female, Younger and White Co-Workers was discriminated against and treated unfairly, more harshly, and less favorably with respect to his terms, conditions and privilege of employment.

**Unlawful Employment Practice (Sex Discrimination)  
In Violation of MHRA §213.055 R.S.Mo.**

35. Plaintiff incorporates and re-alleges paragraphs 1-34 and for his MHRA sex discrimination in employment claim against Defendant states and alleges as follows:
36. Defendant discriminated against Plaintiff with respect to his privileges of employment by creating, fostering, promoting and allowing to exist a hostile, offensive and intimidating work environment.
37. Defendant unfairly disciplined Plaintiff as compared to his female co-workers.
38. Defendant Discharged Plaintiff.



39. Plaintiff's sex was a contributing and motivating factor in Defendant's unfair discipline of Plaintiff compared to his female co-workers.

40. Plaintiff's sex was a contributing and motivating factor in Defendants discharge of Plaintiff.

41. As a direct and proximate result of Defendants actions, Plaintiff has suffered damages, including but not limited to, lost income and benefits, future wages and earnings, and suffered emotional and mental distress, embarrassment, humiliation, and loss of enjoyment of life, all to Plaintiff's damage and detriment.

42. Defendants actions complained of herein were outrageous because of Defendants evil motive or reckless indifference to the rights of plaintiff, thereby entitling Plaintiff to an award of punitive damages in an amount that will punish Defendant and will deter Defendant and others from like conduct.

43. Plaintiff is entitled to, and prays for, equitable relief in the form of reinstatement of employment or in the alternative, front pay, under the MHRA, §213.111.2 R.S.Mo.

**WHEREFORE**, Plaintiff prays for Judgment against Defendant on his Petition and awarding: (i) compensatory damages in an amount the jury deems fair and reasonable in excess of \$25,000.00 according to proof at

trial; (ii) separate punitive damages awards against the Defendant in such amounts as the jury deems just, proper and sufficient to punish the Defendant and to deter like future conduct; (iii) for reinstatement of employment or, in the alternative, front pay; (iv) for his attorneys fees and costs of suit; and (v) such other and further relief as the Court deems just and proper under the circumstances.

**Unlawful Employment Practice (Age Discrimination)  
In Violation of MHRA §213.055 R.S.Mo.**

44. Plaintiff incorporates and re-alleges paragraphs 1-43 and for his MHRA age discrimination in employment claim against Defendant, states and alleges as follows:
45. Defendant discriminated against Plaintiff with respect to his compensation, terms, conditions, or privileges of employment by creating, fostering, promoting and allowing to exist a hostile, offensive and intimidating work environment which had the purpose and effect of substantially interfering with Plaintiff's ability to work as an older staff member.
46. Defendant unfairly disciplined Plaintiff as compared to his younger co-workers.
47. Defendant discharged Plaintiff and replaced him with a younger person.

48. Plaintiff's age was a contributing and motivating factor in Defendants discharge of Plaintiff.
49. As a direct and proximate result of Defendants actions, Plaintiff has suffered damages, including, but not limited to, lost income and benefits, future wages and earnings, and suffered emotional and mental distress, embarrassment, humiliation, and loss of enjoyment of life, all to Plaintiff's damage and detriment.
50. Defendants actions complained of herein were outrageous because of Defendants evil motive or reckless indifference to the rights of plaintiff, thereby entitling Plaintiff to an award of punitive damages in an amount that will punish Defendant and will deter Defendant and others from like conduct.
51. Plaintiff is entitled to, and prays for, equitable relief in the form of reinstatement of employment or, in the alternative, front pay, under the MHRA §213.111.2 R.S.Mo.
52. Plaintiff is entitled to recover his attorney fees, costs of suit and such other sums as the court may award given the MHRA's broad remedial purpose, under the MHRA, §213.111.2 R.S.Mo.

**WHEREFORE**, Plaintiff prays for Judgment against Defendant on his Petition and awarding: (i) compensatory damages in an amount the jury



deems fair and reasonable in excess of \$25,000.00 according to proof at trial; (ii) separate punitive damages awards against the Defendant in such amounts as the jury deems just, proper and sufficient to punish the Defendant and to deter like future conduct; (iii) for reinstatement of employment or, in the alternative, front pay; (iv) for his attorneys fees and costs of suit; and (v) such other and further relief as the Court deems just and proper under the circumstances.

**Unlawful Employment Practice (Race Discrimination)  
In Violation of MHRA §213.055 R.S.Mo.**

53. Plaintiff incorporates and re-alleges paragraphs 1-52 and for his MHRA race discrimination in employment claim against Defendant, states and alleges as follows:

54. Defendant discriminated against Plaintiff with respect to his compensation, terms, conditions, or privileges of employment by creating, fostering, promoting and allowing to exist a hostile, offensive and intimidating work environment which had the purpose and effect of substantially interfering with Plaintiff's ability to work as a Black staff member.

55. Defendant unfairly disciplined Plaintiff as compared to his White co-workers.

56. Defendant Discharged Plaintiff.

57. Plaintiff's race was a contributing and motivating factor in Defendant's unfair discipline of Plaintiff compared to his White co-workers.
58. Plaintiff's race was a contributing and motivating factor in Defendants discharge of Plaintiff.
59. As a direct and proximate result of Defendants actions, Plaintiff has suffered damages, including but not limited to, lost income and benefits, future wages and earnings, and suffered emotional and mental distress, embarrassment, humiliation, and loss of enjoyment of life, all to Plaintiff's damage and detriment.
60. Defendants actions complained of herein were outrageous because of Defendants evil motive or reckless indifference to the rights of plaintiff, thereby entitling Plaintiff to an award of punitive damages in an amount that will punish Defendant and will deter Defendant and others from like conduct.
61. Plaintiff is entitled to, and prays for, equitable relief in the form of reinstatement of employment or in the alternative, front pay, under the MHRA, §213.111.2 R.S.Mo.

**WHEREFORE**, Plaintiff prays for Judgment against Defendant on his Petition and awarding: (i) compensatory damages in an amount the jury deems fair and reasonable in excess of \$25,000.00 according to proof at trial;

(ii) separate punitive damages awards against the Defendant in such amounts as the jury deems just, proper and sufficient to punish the Defendant and to deter like future conduct; (iii) for reinstatement of employment or, in the alternative, front pay; (iv) for his attorneys fees and costs of suit; and (v) such other and further relief as the Court deems just and proper under the circumstances.

Respectfully Submitted,

**By:/s/Jerryl T. Christmas**

Jerryl T. Christmas, #45370

Attorneys for Plaintiff

6101 Delmar Blvd

Saint Louis, Missouri 63112

Phone: 314-588-7105

Fax : 314-361-2525





IN THE 22ND JUDICIAL CIRCUIT, CITY OF ST LOUIS, MISSOURI

B/F 45

Judge or Division: MICHAEL FRANCIS STELZER	Case Number: 2222-CC09336
Plaintiff/Petitioner: PHILLIP BERRY	Plaintiff's/Petitioner's Attorney/Address JERRYL THOMAS CHRISTMAS 6101 DELMAR BLVD SUITE A, 2ND FLOOR SAINT LOUIS, MO 63112
Defendant/Respondent: ST. LOUIS PUBLIC SCHOOLS	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101
Nature of Suit: CC Employment Discrimn 213.111	Please see the attached information for appearing via WebEx. WebEx connection information may also be found at <a href="http://www.stlcitycircuitcourt.com/">http://www.stlcitycircuitcourt.com/</a>

(Date File Stamp)

Summons in Civil Case

The State of Missouri to: ST. LOUIS PUBLIC SCHOOLS  
Alias:

KELVIN ADAMS  
SUPERINTENDENT  
801 N ELEVENTH ST  
ST. LOUIS, MO 63101

SHERIFF'S FEE PAID

COURT SEAL OF



CITY OF ST LOUIS

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

\*\*\*Due to COVID19 challenges, virtual appearances by Webex.com are also required until further order of this Court. \*\*\*

If you have a disability requiring special assistance for your court appearance, please contact the court at least 48 hours in advance of scheduled hearing.

August 29, 2022

Thomas Hoppinger

Date

Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above Summons by: (check one)

- ☐ delivering a copy of the summons and petition to the defendant/respondent.  
☐ leaving a copy of the summons and petition at the dwelling house or usual place of abode of the defendant/respondent with \_\_\_\_\_, a person at least 18 years of age residing therein.  
☐ (for service on a corporation) delivering a copy of the summons and petition to:  
☒ Karla S. Dozier (name) Director of Employee Relations (title).  
☐ other: \_\_\_\_\_

Served at 801 N. 11th St (address)  
in \_\_\_\_\_ (County/City of St. Louis) MO, on 9-12-22 (date) at 8:40am (time).

BRIAN JONES

Printed Name of Sheriff or Server

Bj 537

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on \_\_\_\_\_ (date).

My commission expires:



IN THE 22ND JUDICIAL CIRCUIT, CITY OF ST LOUIS, MISSOURI

Judge or Division: MICHAEL FRANCIS STELZER	Case Number: 2222-CC09336
Plaintiff/Petitioner: PHILLIP BERRY	Plaintiff's/Petitioner's Attorney/Address JERRYL THOMAS CHRISTMAS 6101 DELMAR BLVD SUITE A, 2ND FLOOR SAINT LOUIS, MO 63112
Defendant/Respondent: ST. LOUIS PUBLIC SCHOOLS	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101
Nature of Suit: CC Employmnt Discrmtn 213.111	Please see the attached information for appearing via WebEx. WebEx connection information may also be found at <a href="http://www.stlcircuitcourt.com/">http://www.stlcircuitcourt.com/</a>

04/03/23  
(Date File Stamp)

Summons in Civil Case

The State of Missouri to: ST. LOUIS PUBLIC SCHOOLS  
Alias:

KELVIN ADAMS  
SUPERINTENDENT  
801 N ELEVENTH ST  
ST. LOUIS, MO 63101

SHERIFF'S FEE PAID

COURT SEAL OF



CITY OF ST LOUIS

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

\*\*\*Due to COVID19 challenges, virtual appearances by Webex.com are also required until further order of this Court. \*\*\*

If you have a disability requiring special assistance for your court appearance, please contact the court at least 48 hours in advance of scheduled hearing.

August 29, 2022

*Thomas Hoepfinger*

Date

Clerk

Further Information:

Sheriff's or Server's Return

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I certify that I have served the above Summons by: (check one)

☐ delivering a copy of the summons and petition to the defendant/respondent.

☐ leaving a copy of the summons and petition at the dwelling house or usual place of abode of the defendant/respondent with \_\_\_\_\_, a person at least 18 years of age residing therein.

☐ (for service on a corporation) delivering a copy of the summons and petition to:

☐ other: \_\_\_\_\_ (name) \_\_\_\_\_ (title).

Served at \_\_\_\_\_ (address)  
in \_\_\_\_\_ (County/City of St. Louis), MO, on \_\_\_\_\_ (date) at \_\_\_\_\_ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on \_\_\_\_\_ (date).

My commission expires:

IN THE CIRCUIT COURT OF ST. LOUIS CITY  
22ND JUDICIAL CIRCUIT  
STATE OF MISSOURI

PHILLIP A. BERRY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2222-CC09336
	)	
ST. LOUIS PUBLIC SCHOOLS,	)	
	)	
Defendant.	)	

**ENTRY OF APPEARANCE**

**COMES NOW** Vince Reese, of the law firm Mickes O'Toole, LLC and enters his appearance on behalf of Defendant St. Louis Public Schools in the above-referenced matter.

Respectfully submitted,

**MICKES O'TOOLE, LLC**

By: /s/ Vince Reese  
Vince Reese, #49576  
vreesee@mickesotoole.com  
Melanie A. Renken, #59973  
mrenken@mickesotoole.com  
12444 Powerscourt Drive, Suite 400  
St. Louis, Missouri 63131  
Telephone: 314-878-5600  
Facsimile: 314-878-5607

*Attorneys for Defendant St. Louis Public Schools*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of October, 2022, a true and correct copy of the foregoing was filed with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following counsel of record:

Jerryl T. Christmas  
6101 Delmar Blvd.  
St. Louis, MO 63112  
Telephone: 314-588-7105  
Facsimile: 314-361-2525

*Attorney for Plaintiff*

/s/ Vince Reese



IN THE CIRCUIT COURT OF ST. LOUIS CITY  
22ND JUDICIAL CIRCUIT  
STATE OF MISSOURI

PHILLIP A. BERRY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2222-CC09336
	)	
ST. LOUIS PUBLIC SCHOOLS,	)	
	)	
Defendant.	)	

**ENTRY OF APPEARANCE**

**COMES NOW** Melanie A. Renken, of the law firm Mickes O'Toole, LLC and enters her appearance on behalf of Defendant St. Louis Public Schools in the above-referenced matter.

Respectfully submitted,

**MICKES O'TOOLE, LLC**

By: /s/ Melanie A. Renken  
Vince Reese, #49576  
vreesee@mickesotoole.com  
Melanie A. Renken, #59973  
mrenken@mickesotoole.com  
12444 Powerscourt Drive, Suite 400  
St. Louis, Missouri 63131  
Telephone: 314-878-5600  
Facsimile: 314-878-5607

*Attorneys for Defendant St. Louis Public Schools*

**CERTIFICATE OF SERVICE**

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Jerryl T. Christmas  
6101 Delmar Blvd.  
St. Louis, MO 63112  
Telephone: 314-588-7105  
Facsimile: 314-361-2525

*Attorney for Plaintiff*

/s/ Melanie A. Renken

IN THE CIRCUIT COURT OF ST. LOUIS CITY  
22ND JUDICIAL CIRCUIT  
STATE OF MISSOURI

PHILLIP A. BERRY

Plaintiff,

vs.

ST. LOUIS PUBLIC SCHOOLS,

Defendant.

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Cause No.: 2222-CC09336

**DEFENDANT ST. LOUIS PUBLIC SCHOOL'S  
MOTION TO DISMISS PLAINTIFF'S AMENDED PETITION**

**COMES NOW** Defendant St. Louis Public Schools (“the District”) by and through its undersigned counsel, and for its Motion to Dismiss Plaintiff’s Amended Petition (“Motion”) states as follows:

1. Plaintiff is a former employee of the District who was terminated following an investigation into his alleged inappropriate touching of a student.
2. On August 24, 2022, Plaintiff filed a single-count Petition, alleging sex discrimination in violation of the Missouri Human Rights Act (“MHRA”).
3. Plaintiff filed an Amended Petition on August 30, 2022, adding claims of age and race discrimination under the MHRA.
4. The Missouri Commission on Human Rights (“MCHR”) issued its Notice of Right to Sue (“Right-to-Sue Letter”) on May 24, 2022.
5. “[A]ny action brought in court under [the MHRA] **shall** be filed within ninety days from the date of the commission’s [Right-to-Sue Letter] to the individual . . . .” Mo. Rev. Stat. §213.111.1.

6. All three (3) of Plaintiff's claims are time-barred because he failed to file them within ninety (90) days of the MCHR issuing its Right-to-Sue Letter.

WHEREFORE Defendant respectfully requests that this Court issue an Order dismissing Plaintiff's Amended Petition with prejudice, and for such other relief as this Court deems just and proper under the circumstances.

Respectfully submitted,

**MICKES O'TOOLE, LLC**

By: /s/ Melanie A. Renken

Vince Reese, #49576

vreesee@mickesotoole.com

Melanie A. Renken, #59973

mrenken@mickesotoole.com

12444 Powerscourt Drive, Suite 400

St. Louis, Missouri 63131

Telephone: 314-878-5600

Facsimile: 314-878-5607

*Attorneys for Defendant St. Louis Public Schools*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of October, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

Jerryl T. Christmas  
6101 Delmar Blvd.  
St. Louis, MO 63112  
Telephone: 314-588-7105  
Facsimile: 314-361-2525

*Attorney for Plaintiff*

/s/ Melanie A. Renken





IN THE CIRCUIT COURT OF ST. LOUIS CITY  
22ND JUDICIAL CIRCUIT  
STATE OF MISSOURI

PHILLIP A. BERRY

Plaintiff,

**VS.**

**ST. LOUIS PUBLIC SCHOOLS,**

**Defendant.**

**Cause No.: 2222-CC09336**

**DEFENDANT ST. LOUIS PUBLIC SCHOOL'S MEMORANDUM IN SUPPORT OF  
ITS MOTION TO DISMISS PLAINTIFF'S AMENDED PETITION**

**COMES NOW** Defendant St. Louis Public Schools (“the District”) by and through its undersigned counsel, and for its Memorandum in Support of its Motion to Dismiss Plaintiff’s Amended Petition, states as follows:

## INTRODUCTION

Plaintiff is a former employee of the District who was terminated following an investigation into his alleged inappropriate touching of a student. On August 24, 2022, Plaintiff filed a single-count Petition, alleging sex discrimination in violation of the Missouri Human Rights Act (“MHRA”). Plaintiff filed an Amended Petition on August 30, 2022, adding claims of age and race discrimination under the MHRA.

All three (3) of Plaintiff's claims are time-barred because he failed to file them within ninety (90) days of the Missouri Commission on Human Rights ("MCHR") issuing its Notice of Right to Sue ("Right-to-Sue Letter").

### **STANDARD OF REVIEW**

Missouri is a fact pleading state. *ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 379 (Mo. 1993) (en banc). “In Missouri, motions to dismiss for failure to state a claim have substantially more ‘bite’ under our ‘fact pleading’ rules than they have under the federal system of ‘notice pleading.’” *Id.*

“A motion to dismiss is the proper motion for attacking a petition on the ground it is barred by the statute of limitations, especially where the expiration of the limitation appears on the face of the petition.” *Harris-Laboy v. Blessing Hosp., Inc.*, 972 S.W.2d 522, 524 (Mo. Ct. App. 1998). “The determination of whether the statute of limitations applies to bar the action is a question of law.” *Id.*

As explained below, it is clear from the face of Plaintiff’s Amended Petition that all of his claims are time-barred by the MHRA statute of limitations.

### **ARGUMENT**

#### **I. Neither Plaintiff’s Petition Nor His Amended Petition Was Filed Within 90 Days of the MCHR Right-to-Sue Letter.**

Statutes of limitations contained in the MHRA are strictly construed. *Hammond v. Mun. Correction Inst.*, 117 S.W.3d 130, 138 (Mo. Ct. App. 2003). “Statutes of limitation are favored in the law . . . .” *Id.* at 138. Only the legislature may enact exceptions to statutes of limitation, and the court does not have the authority to expand on any such exceptions. *Id.* at 138–139.

“[A]ny action brought in court under [the MHRA] **shall** be filed within ninety days from the date of the commission’s [Right-to-Sue Letter] to the individual . . . .” Mo. Rev. Stat. § 213.111.1. “The language of section 213.111.1 is clear and ambiguous: the 90-day statute of limitations begins running from the date of the right-to-sue letter.” *State ex rel. Church & Dwight Co., Inc. v. Collins*, 543 S.W.3d 22, 26 (Mo. 2018) (affirming circuit court’s dismissal when plaintiff filed lawsuit 91 days after

the date of the right-to-sue letter); *see also Hammond*, 117 S.W.3d at 140 (“By the terms of the [MHRA], there is no provision made for time the [Right-to-Sue Letter] spends in the mail.”).

The MCHR issued its Right-to-Sue Letter on May 24, 2022. Petition, ¶ 7. Plaintiff filed his original, single-count Petition alleging sex discrimination on Wednesday, August 24, 2022—ninety-two (92) days after the MCHR issued the Right-to-Sue Letter. On Tuesday, August 30, 2022, Plaintiff amended his Petition to add claims of race and age discrimination. By that time, ninety-eight (98) days had passed since the MCHR issued the Right-to-Sue Letter.

Contrary to his own admission concerning the date of the MCHR issued the Right-to-Sue Letter and a court record that expressly recorded the dates of his filings, Plaintiff nonetheless alleges he “initiated this action within ninety (90) days of the date of the [Right-to-Sue Letter].” Petition, ¶ 7. That allegation is false, and the court must look no further than the docket sheet to see that Plaintiff did not, in fact, initiate this action within ninety (90) days of the Right to Sue Letter. To the contrary, he did not file an action alleging sex discrimination until ninety-two (92) days following the Right to Sue Letter, and did not file an action alleging age and/or race discrimination for another six (6) days after that.

All of Plaintiff’s claims are barred entirely because they were not timely filed within ninety (90) days of the MCHR issuing the Right-to-Sue Letter. There is no cure for the fatal defect of Plaintiff’s untimely MHRA claims; as such, the court should dismiss his Amended Petition with prejudice.

### **CONCLUSION**

For the reasons stated in this Memorandum, the District respectfully requests that this Court dismiss Plaintiffs’ Amended Petition with prejudice and grant such other relief as this Court deems just and proper.



Respectfully submitted,

**MICKES O'TOOLE, LLC**

By: /s/ Melanie A. Renken

Vince Reese, #49576

vrees@mickeotoole.com

Melanie A. Renken, #59973

mrenken@mickeotoole.com

12444 Powerscourt Drive, Suite 400

St. Louis, Missouri 63131

Telephone: 314-878-5600

Facsimile: 314-878-5607

*Attorneys for Defendant St. Louis Public Schools*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of October, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

Jerryl T. Christmas

6101 Delmar Blvd.

St. Louis, MO 63112

Telephone: 314-588-7105

Facsimile: 314-361-2525

*Attorney for Plaintiff*

/s/ Melanie A. Renken

IN THE CIRCUIT COURT OF ST. LOUIS CITY  
22ND JUDICIAL CIRCUIT  
STATE OF MISSOURI

PHILLIP A. BERRY

Plaintiff,

vs.

ST. LOUIS PUBLIC SCHOOLS

SERVE: KELVIN ADAMS

Superintendent

801 N. Eleventh St.

St. Louis, MO 63101

Cause No. 2222-CC09336

Defendant.

**AMENDED PETITION FOR**  
**SEX, AGE, AND RACE DISCRIMINATION**

COMES NOW Plaintiff, Philip A. Berry, by and through counsel, and for his Petition against Defendant ST. LOUIS PUBLIC SCHOOLS ("Defendant"), states and alleges as follows:

### **Jurisdiction and Venue**

1. This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (“Title VII”), and the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621 *et seq.* (“ADEA”).

2. The unlawful employment practices complained of herein were committed in St. Louis, Missouri.

3. Plaintiff PHILLIP A. BERRY is a Black male resident of Missouri, over the age of forty and a former employee of Defendant ST. LOUIS PUBLIC SCHOOLS.

4. Defendant is a domestic general assembly organized and existing under the laws of the State of Missouri and was Plaintiff’s former employer and an employer as defined under Title VII and ADEA.

5. At all times material to this action, Defendant has engaged in an industry affecting commerce and had twenty or more employees for each working day.

### **Administrative Procedures**

6. Plaintiff timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”).

7. Thereafter, Plaintiff received a Notice of Right to Sue from the EEOC, dated September 21, 2022, and has initiated this action within ninety (90) days of receipt of such notice.

**Facts Common to All Counts**

8. Plaintiff was a full time employee for Defendant at AESM Middle School at L'Ouverture.

9. Plaintiff was employed as a Family Community Specialist for Defendant.

10. Plaintiff was employed by the Defendant for sixteen (16) years.

11. Plaintiff never received an unsatisfactory evaluation.

12. Plaintiff was the only Black male employed as a Family Community Specialist in the building.

13. Plaintiff was treated differently in the terms and conditions of his employment because of his sex, age, and race when he was disciplined and discharged.

14. On March 3, 2021, Plaintiff was advised a White female staff member had reported that Plaintiff had allegedly inappropriately touched a female student.

15. The White female staff member reported this had allegedly happened in February of 2019.



16. The school has security cameras, but there is no footage for the time period in question.

17. The White female staff member did not know what day of the month in February of 2019 this inappropriate touching allegedly occurred.

18. The White female staff member reported a 14 year old female student had reported this alleged incident to her.

19. A Black female Human Resource Officer requested to interview Plaintiff.

20. Plaintiff appeared for the interview and requested legal representation.

21. The Black female Human Resource Officer declined his request.

22. The Black female Human Resource Officer slapped her hands together at Plaintiff and began to demean, intimidate, and belittle Plaintiff.

23. The Black female Human Resource Officer created a hostile environment for the Plaintiff as compared to similarly situated female, White and younger co-workers.

24. The Black female Human Resource Officer harassed Plaintiff as compared to similarly situated female, White and younger co-workers.

25. Plaintiff denied having any inappropriate contact with the 14 year old female student.

26. The Defendant reported the accusation to the Missouri Department of Social Services on March 2, 2021.

27. The Missouri Department of Social Services opened an investigation into the accusations against Plaintiff.

28. Defendant placed Plaintiff on administrative leave on March 3, 2021.

29. Defendant discharged Plaintiff on April 5, 2021, for alleged policy violations that were simply a pretext for sex, age, and race discrimination.

30. The Missouri Department of Social Services interviewed the Plaintiff, multiple staff members, multiple students, and the alleged victim.

31. No one, including the alleged victim, indicated to the Missouri Department of Social Services that Plaintiff touched or said anything inappropriate to her or any other student.

32. On April 8, 2021, The Missouri Department of Social Services issued a report on its findings.

33. The Missouri Department of Social Services concluded in its report that the allegations were unsubstantiated.

34. Defendant created, fostered, promoted, and allowed to exist a hostile work environment in which Plaintiff was discriminated against and treated unfairly, more harshly, and less favorably with respect to his terms, conditions and

privileges of employment as compared to similarly situated female, younger and White co-workers.

**Unlawful Employment Practice (Sex Discrimination) In Violation of Title VII**

35. Plaintiff incorporates and re-alleges paragraphs 1-34 and for his sex discrimination in employment claim against Defendant states and alleges as follows:

36. Defendant discriminated against Plaintiff by creating, fostering, promoting, and allowing to exist a hostile, offensive and intimidating work environment because of his sex.

37. Defendant unfairly disciplined Plaintiff as compared to his similarly situated female co-workers.

38. Defendant discriminatorily discharged Plaintiff for reasons not applied equally to his similarly situated female co-workers.

39. Plaintiff's sex was a contributing and motivating factor in Defendant's unfair discipline of Plaintiff compared to his female co-workers.

40. Plaintiff's sex was a contributing and motivating factor in Defendants discharge of Plaintiff.

41. As a direct and proximate result of Defendant's actions, Plaintiff has suffered compensable damages, including but not limited to, lost income and benefits, future wages and earnings, and has also suffered emotional and mental



distress, embarrassment, humiliation, and loss of enjoyment of life, all to Plaintiff's damage and detriment.

42. Defendant's actions complained of herein were outrageous because of Defendant's evil motive or reckless indifference to the rights of Plaintiff, thereby entitling Plaintiff to an award of punitive damages in an amount that will punish Defendant and will deter Defendant and others from like conduct.

43. Plaintiff is entitled to equitable relief in the form of reinstatement of employment or, in the alternative, back pay and front pay, under Title VII.

44. Plaintiff is entitled to recover his attorney fees, costs of suit, and such other sums as the court may award.

45. **WHEREFORE**, Plaintiff prays for Judgment against Defendant on his Petition awarding: (i) back pay and compensatory damages in an amount the jury deems fair and reasonable in excess of \$25,000.00 according to proof at trial; (ii) separate punitive damages awards against the Defendant in such amounts as the jury deems just, proper and sufficient to punish the Defendant and to deter like future conduct; (iii) reinstatement of employment or, in the alternative, front pay; (iv) his attorneys fees and costs of suit; and (v) such other and further relief as the Court deems just and proper under the circumstances.

**Unlawful Employment Practice (Age Discrimination) in Violation of ADEA**

46. Plaintiff incorporates and re-alleges paragraphs 1-44 and for his age discrimination in employment claim against Defendant, states and alleges as follows:

47. Defendant discriminated against Plaintiff with respect to his compensation, terms, conditions, or privileges of employment by creating, fostering, promoting and allowing to exist a hostile, offensive and intimidating work environment which had the purpose and effect of substantially interfering with Plaintiff's ability to work as an older staff member.

48. Defendant unfairly disciplined Plaintiff as compared to his similarly situated younger co-workers.

49. Defendant discriminatorily discharged Plaintiff and replaced him with a younger person for reasons not applied equally to his similarly situated younger co-workers.

50. Plaintiff's age was a contributing and motivating factor in Defendant's unfair discipline of Plaintiff compared to his younger co-workers.

51. Plaintiff's age was a contributing and motivating factor in Defendant's discharge of Plaintiff.

52. As a direct and proximate result of Defendant's actions, Plaintiff has suffered compensable damages, including but not limited to, lost income and



benefits, future wages and earnings, and has also suffered emotional and mental distress, embarrassment, humiliation, and loss of enjoyment of life, all to Plaintiff's damage and detriment.

53. Defendant's actions complained of herein were outrageous because of Defendant's evil motive or reckless indifference to the rights of Plaintiff, thereby entitling Plaintiff to an award of punitive damages in an amount that will punish Defendant and will deter Defendant and others from like conduct.

54. Plaintiff is entitled to, and prays for, equitable relief in the form of reinstatement of employment or, in the alternative, front pay, under the ADEA.

55. Plaintiff is entitled to recover his attorney fees, costs of suit, and such other sums as the court may award.

56. **WHEREFORE**, Plaintiff prays for Judgment against Defendant on his Petition awarding: (i) back pay and compensatory damages in an amount the jury deems fair and reasonable in excess of \$25,000.00 according to proof at trial; (ii) separate punitive damages awards against the Defendant in such amounts as the jury deems just, proper and sufficient to punish the Defendant and to deter like future conduct; (iii) reinstatement of employment or, in the alternative, front pay; (iv) his attorneys fees and costs of suit; and (v) such other and further relief as the Court deems just and proper under the circumstances.

**Unlawful Employment Practice (Race Discrimination) in Violation of MHRA §213.055 R.S.Mo.**

57. Plaintiff incorporates and re-alleges paragraphs 1-55 and for his race discrimination in employment claim against Defendant, states and alleges as follows:

58. Defendant discriminated against Plaintiff with respect to his compensation, terms, conditions, or privileges of employment by creating, fostering, promoting and allowing to exist a hostile, offensive and intimidating work environment which had the purpose and effect of substantially interfering with Plaintiff's ability to work as a Black staff member.

59. Defendant unfairly disciplined Plaintiff as compared to his White co-workers.

60. Defendant discharged Plaintiff.

61. Plaintiff's race was a contributing and motivating factor in Defendant's discipline and discharge of Plaintiff.

62. As a direct and proximate result of Defendant's actions, Plaintiff has suffered damages, including but not limited to, lost income and benefits, future wages and earnings, and suffered emotional and mental distress, embarrassment, humiliation, and loss of enjoyment of life, all to Plaintiff's damage and detriment.

63. Defendant's actions complained of herein were outrageous because of Defendant's evil motive or reckless indifference to the rights of Plaintiff, thereby

entitling Plaintiff to an award of punitive damages in an amount that will punish Defendant and will deter Defendant and others from like conduct.

64. Plaintiff is entitled to, and prays for, equitable relief in the form of reinstatement of employment or in the alternative, front pay, under Title VII.

65. **WHEREFORE**, Plaintiff prays for Judgment against Defendant on his Petition awarding: (i) back pay and compensatory damages in an amount the jury deems fair and reasonable in excess of \$25,000.00 according to proof at trial; (ii) separate punitive damages awards against the Defendant in such amounts as the jury deems just, proper and sufficient to punish the Defendant and to deter like future conduct; (iii) reinstatement of employment or, in the alternative, front pay; (iv) his attorneys fees and costs of suit; and (v) such other and further relief as the Court deems just and proper under the circumstances.

Respectfully Submitted,

By: /s/Jerryl T. Christmas

Jerryl T. Christmas, #45370

Attorneys for Plaintiff

6101 Delmar Blvd

Saint Louis, Missouri 63112

Phone: 314-588-7105

Fax : 314-361-2525

IN THE CIRCUIT COURT OF ST. LOUIS CITY  
22ND JUDICIAL CIRCUIT  
STATE OF MISSOURI

PHILLIP A. BERRY

Plaintiff,

**VS.**

**ST. LOUIS PUBLIC SCHOOLS,**

**Defendant.**

**Cause No.: 2222-CC09336**

**MOTION TO STRIKE PLAINTIFF'S SECOND AMENDED PETITION**

COMES NOW Defendant St. Louis Public Schools (“the District”), by and through the undersigned counsel, and for its Motion to Strike Plaintiff’s Second Amended Petition, states:

1. Plaintiff filed a single-count Petition in this case on August 24, 2022, alleging sex discrimination in violation of the Missouri Human Rights Act (“MHRA”) (“Original Petition”).
2. Plaintiff filed an Amended Petition on August 30, 2022, in which he added MHRA claims of age and race discrimination (“First Amended Petition”).
3. On October 6, 2022, the District timely filed a Motion to Dismiss Plaintiff’s Amended Petition, as all of Plaintiff’s claims were time-barred due to his failure to file within the MHRA’s statute of limitations.
4. On December 19, 2022, Plaintiff purported to file, without obtaining leave of the Court, another Amended Petition (“Second Amended Petition”).
5. Missouri Rule of Civil Procedure 55.33(a) provides that, if a party already has amended a pleading once, it may do so again “only by leave of the court or by written consent of the adverse party.”



6. To date, Plaintiff has not requested, nor obtained, leave of Court to file his Second Amended Petition.

7. Likewise, to date, Plaintiff has not requested, nor obtained, the District's consent to file his Second Amended Petition.

8. Based upon the foregoing, Plaintiff's Second Amended Petition is improperly filed in violation of Rule 55.33(a).

9. Accordingly, the District moves to strike Plaintiff's improperly filed Second Amended Petition. Petition.

10. If Plaintiff desires to file a Second Amended Petition, he must do so in compliance with the Missouri Rules of Civil Procedure, which require him to file a Motion for Leave to File a Second Amended Petition, to which the District should have the opportunity to respond and/or object. Mo.R.Civ.P. 55.33(a).

**WHEREFORE**, for the reasons stated herein, the District moves the Court to grant its Motion to Strike Plaintiff's Second Amended Petition and for such other and further relief as may be appropriate under the circumstances.

Respectfully Submitted,

MICKES O'TOOLE, LLC.

By: /s/Melanie A. Renken  
Vincent D. Reese, #49576  
Melanie A. Renken, #59973  
555 Maryville University Drive, Suite 240  
St. Louis, MO 63141  
(314) 878-5600 (telephone)  
(314) 878-5607 (facsimile)  
[vreesse@mickesotoole.com](mailto:vreesse@mickesotoole.com)  
[mrenken@mickesotoole.com](mailto:mrenken@mickesotoole.com)  
*Attorneys for Defendant St. Louis Public Schools*



**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of December, 2022, a true and correct copy of the foregoing was filed with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following counsel of record:

Jerryl T. Christmas  
6101 Delmar Blvd.  
St. Louis, MO 63112  
Telephone: 314-588-7105  
Facsimile: 314-361-2525

*Attorney for Plaintiff*

/s/ Melanie A. Renken

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
TWENTY-SECOND JUDICIAL CIRCUIT  
STATE OF MISSOURI**

PHILLIP A BERRY,

Plaintiff,

vs.

ST. LOUIS PUBLIC SCHOOLS,

Defendants.

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Cause No. 2222-CC09336

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that the undersigned will call for hearing Defendant St. Louis Public Schools' Motion to Strike Plaintiff's Second Amended Petition at 9:00 a.m. on January 11, 2023, or as soon thereafter as counsel may be heard.

Counsel for the parties have agreed to attend this hearing via Webex using the following call-in details, as listed on this Court's web site:

**URL:** <https://mocourts.webex.com/meet/jason.sengheiser/>

**Meeting Number:** 962 737 631

Respectfully Submitted,

**MICKES O'TOOLE, LLC**

By: /s/ Melanie A. Renken  
Vince Reese, #49576  
[vreesee@mickesotoole.com](mailto:vreesee@mickesotoole.com)  
Melanie A. Renken  
[mrenken@mickesotoole.com](mailto:mrenken@mickesotoole.com)  
12444 Powerscourt Drive, Suite 400  
St. Louis, MO 63131  
Telephone: (314) 878-5600  
Facsimile: (314) 878-5607

*Attorneys for Defendant St Louis Public  
Schools*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 3, 2023, a true and correct copy of the foregoing was filed with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following counsel of record:

Jerryl T. Christmas  
6101 Delmar Blvd.  
St. Louis, MO 63112  
Telephone: 314-588-7105  
Facsimile: 314-361-2525

*Attorney for Plaintiff*

/s/ Melanie A. Renken

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
TWENTY-SECOND JUDICIAL CIRCUIT  
STATE OF MISSOURI

PHILLIP A BERRY,

Plaintiff,

vs.

ST. LOUIS PUBLIC SCHOOLS,

Defendants.

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Cause No. 2222-CC09336

**AMENDED NOTICE OF HEARING**

PLEASE TAKE NOTICE that the undersigned will call for hearing Defendant St. Louis Public Schools' Motion to Strike Plaintiff's Second Amended Petition at 9:00 a.m. on January 25, 2023 (previously noticed for January 11, 2023) or as soon thereafter as counsel may be heard.

Counsel for the parties have agreed to attend this hearing via Webex using the following call-in details, as listed on this Court's web site:

**URL:** <https://mocourts.webex.com/meet/jason.sengheiser/>

**Meeting Number:** 962 737 631

Respectfully Submitted,

**MICKES O'TOOLE, LLC**

By: /s/ Melanie A. Renken  
Vince Reese, #49576  
[vreesee@mickesotoole.com](mailto:vreesee@mickesotoole.com)  
Melanie A. Renken  
[mrenken@mickesotoole.com](mailto:mrenken@mickesotoole.com)  
12444 Powerscourt Drive, Suite 400  
St. Louis, MO 63131  
Telephone: (314) 878-5600  
Facsimile: (314) 878-5607

*Attorneys for Defendant St Louis Public  
Schools*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 10, 2023, a true and correct copy of the foregoing was filed with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following counsel of record:

Jerryl T. Christmas  
6101 Delmar Blvd.  
St. Louis, MO 63112  
Telephone: 314-588-7105  
Facsimile: 314-361-2525

*Attorney for Plaintiff*

/s/ Melanie A. Renken



**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
TWENTY-SECOND JUDICIAL CIRCUIT  
STATE OF MISSOURI**

PHILLIP BERRY	)	
	)	
Plaintiff	)	Cause No: 2222-CC09336
	)	
vs.	)	
	)	
ST. LOUIS PUBLIC SCHOOLS	)	
	)	
Defendants.	)	

**MOTION FOR LEAVE TO FILE AMENDED PETITION**

Comes Now, Jerry T. Christmas counsel for the above named Defendant and requests leave to file an amended petition:

1. Plaintiff timely filed an amended petition on December 19, 2022.
2. Plaintiff honestly believed its original petition filed on August 24, 2022 was timely because it was within three months of the deadline but apparently was a few days later than 90 days.
3. Plaintiff seeks to file the amended complaint so that this claim can be heard on the merits as to which it is timely rather than dismissed on technical grounds.
4. Missouri Rules of Civil Procedure 55.33(a) provides that leave shall be freely given when justice so requires.

WHEREFORE, for the reasons stated herein, Plaintiff requests the Court grant his motion for leave and accept the amended petition.

Respectfully Submitted,

**/s/ Jerryl T. Christmas**

Jerryl T. Christmas, #45370

Attorney for Defendant

6101 Delmar Boulevard

St. Louis, MO 63112

314- 588-7105 Office

314-361-2525 Fax



4. On August 30, 2022, Plaintiff filed an Amended Petition (“First Amended Petition”), adding claims of age and race discrimination under the MHRA. Because the District had not yet filed a responsive pleading to the Original Petition, Plaintiff was not required to obtain leave of this Court to file the First Amended Petition. Mo.Sup.Ct.R. 55.33(a).

5. On October 6, 2022, the District timely filed a Motion to Dismiss Plaintiff’s Amended Petition (“Motion to Dismiss”), in which it asked this Court to dismiss Plaintiff’s First Amended Petition in its entirety because all of Plaintiff’s MHRA claims are time-barred due to Plaintiff’s failure to file suit within ninety (90) days of the MCHR issuing its Right-to-Sue Letter. Mo. Rev. Stat. § 213.111.1.

6. On September 21, 2022, while the District’s Motion to Dismiss remained pending, the EEOC issued Plaintiff a Right-to-Sue Letter, granting Plaintiff the right to file suit concerning alleged violations of Title VII and the ADEA **within ninety (90) days of his receipt of the EEOC’s Right-to-Sue Letter**. Plaintiff’s counsel acknowledged receipt of the EEOC’s Right-to-Sue letter that same day (i.e., September 21, 2022).

7. On December 19, 2022, Plaintiff filed a purported Second Amended Petition, adding claims under Title VII and the ADEA.

8. Plaintiff did not seek leave of this Court and/or the District’s consent to file a Second Amended Petition, as required by Missouri Supreme Court Rule 55.33(a).

9. On December 21, 2022, the District filed a Motion to Strike Plaintiff’s Second Amended Petition, due to Plaintiff’s failure to comply with Rule 55.33(a).

10. On January 10, 2023, Plaintiff filed a Motion for Leave to File Amended Petition (“Motion for Leave”), acknowledging that he filed his Original Petition out of time due to his own miscalculation, but asking this Court to nonetheless allow his claims to proceed.

11. “Statutes of limitations may be suspended or tolled only by specific disabilities or exceptions enacted by the legislature, and courts cannot extend those exceptions.” *State ex rel. Church & Dwight Co., Inc. v. Collins*, 543 S.W.3d 22, 26 (Mo. banc 2018) (circuit court exceeded its authority in denying defendant’s motion to dismiss based on failure to file within MHRA statute of limitations) (quoting *Hill v. John Chezik Imps.*, 797 S.W.2d 528, 530 (Mo.App. 1990).

12. “A court rightly refuses a request to grant leave to amend if the requested amendment would not cure the legal defects in the originally-asserted claims.” *Suppes v. Curators of the Univ. of Missouri*, 613 S.W.3d 836, 857 (Mo.App.W.D. 2020); *see also Spencer v. State*, 334 S.W.3d 559, 573 (Mo.App.W.D. 2010) (court should deny a request for leave to amend a petition when “the requested amendment would not cure the deficiency” of the original pleading).

13. In *Church & Dwight Co.*— a case strikingly similar to the one at bar—the Missouri Supreme Court held, *en banc*, that the court abused its discretion when it:

a. denied the defendant’s motion to dismiss that was based on the plaintiff’s failure to file suit within ninety (90) days of her right-to-sue letter; and

b. granted the plaintiff leave to amend her petition when the amendments would not have survived a motion to dismiss.

543 S.W.3d 22, 27–28.

14. The *Church & Dwight Co.* based its holding on the principal it is “‘fundamentally unjust to force another to suffer the considerable expense and inconvenience of litigation’ in addition to being ‘a waste of judicial resources and taxpayer money’” if a petition cannot state a cause of action. *Id.* at 26 (quoting *State ex rel. Henley v. Bickel*, 285 S.W.3d 327, 330 (Mo. banc 2009).

15. Granting Plaintiff leave to amend the First Amended Petition would be futile, thus resulting in “a waste of judicial resources and taxpayer money,” because:



a. the proposed amendments (i.e., the addition of Title VII and ADEA claims) would not cure the untimeliness of the claims contained in the First Amended Petition; and

b. the proposed amendments (i.e., the Title VII and ADEA claims) could not survive a motion to dismiss because the 90-day statute of limitations applicable to Plaintiff's Title VII and ADEA claims has expired.

16. Further, pursuant to *Church & Dwight Co.* and *Henley*, granting Plaintiff leave to file his purported Second Amended Petition would be “fundamentally unjust” to the District, as it would require it (i.e., taxpayers) to expend resources to continue litigating claims that the legislature has expressly stated he is not allowed to litigate.

### **CONCLUSION**

For the reasons stated herein, the District respectfully requests that this Court deny Plaintiffs' Motion to File Amended Petition with prejudice and grant such other relief as this Court deems just and proper.

Respectfully submitted,

**MICKES O'TOOLE, LLC**

By: /s/ Melanie A. Renken

Vince Reese, #49576

vreesse@mickesotoole.com

Melanie A. Renken, #59973

mrenken@mickesotoole.com

12444 Powerscourt Drive, Suite 400

St. Louis, Missouri 63131

Telephone: 314-878-5600

Facsimile: 314-878-5607

*Attorneys for Defendant St. Louis Public Schools*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of January, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

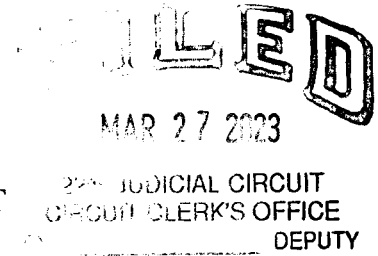
Jerryl T. Christmas  
6101 Delmar Blvd.  
St. Louis, MO 63112  
Telephone: 314-588-7105  
Facsimile: 314-361-2525

*Attorney for Plaintiff*

/s/ Melanie A. Renken

STATE OF MISSOURI )  
 ) SS  
CITY OF ST. LOUIS )

**MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(City of St. Louis)**



Phillip A. Berry, )  
 )  
Plaintiff, )  
 ) No. 2222-CC09336  
v. )  
 ) Division No. 18  
St. Louis Public Schools, )  
 )  
Defendant, )

**ENTERED**

**MAR 27 2023**

**MJD**

**ORDER**

On January 25, 2023, the Court held a hearing on Defendant St. Louis Public Schools' ("the District") motion to strike Plaintiff Phillip A. Berry's ("Berry") second amended petition. After hearing the arguments, the Court took the matter under submission. The Court now rules as follows.

The alleged facts are as follows: Berry dually filed a charge of discrimination against the District on October 1, 2021, with the Missouri Commission on Human Rights ("MCHR") and the Equal Employment Opportunity Commission ("EEOC"), alleging violations of the Missouri Human Rights Act ("MHRA"), Title VII of the Civil Rights Act of 1964 ("Title VII"), and the Age Discrimination in Employment Act ("ADEA") regarding his termination.

Berry received a Notice of Right to Sue from the MCHR on May 24, 2022. Subsequently, Berry filed a single-count petition on August 24, 2022, and an amended petition adding claims of age and race discrimination under the MHRA on August 30, 2022. Thus, the causes of action in Berry's August 30, 2022 first amended petition were Count I for sex discrimination under the

MHRA, Count II for age discrimination under the MHRA, and Count III for race discrimination under the MHRA.

On September 21, 2022, EEOC issued Berry a Right-to-Sue Letter. After that, Berry filed a second amended petition on December 19, 2022, adding claims under Title VII and the ADEA. Thus, the causes of action in the December 19, 2022 amended petition were Count I for sex discrimination under Title VII, Count II for age discrimination under the ADEA, and Count III for race discrimination under the MHRA.

After the District filed a motion to dismiss Berry's August 30, 2022 first amended petition on October 6, 2022, and motion to strike Berry's December 19, 2022 second amended petition on December 21, 2022, Berry filed a Motion for Leave on January 10, 2023, seeking for his claims to be heard on the merits rather than dismissed on technical grounds.

In its motions to strike and dismiss, the District contends Berry filed its MHRA action two days outside the ninety-day allotted period. As a result, the District asserts all three of Berry's claims are time-barred because he failed to file them within ninety days of the MCHR issuing its Right-to-Sue Letter.

The only requirements imposed by Section 213.111 to file a claim under the MHRA are that: (1) an employee file a charge with the Commission prior to filing a state court action; (2) the Commission issue a right to sue letter; and (3) the state court action be filed within ninety days of the issuance of the right to sue letter but no later than two years after the alleged cause occurred or its reasonable discovery by the alleged injured party. Farrow v. Saint Francis Medical Center, 407 S.W.3d 579, 591 (Mo banc 2013). Therefore, a statute of limitations begins to run when the right to sue letter is issued: "Any action brought in court under [the MHRA] shall be filed within ninety days from the date of the commission's notification letter to the individual but no later than two

years after the alleged cause of occurred or its reasonable discovery by the alleged injury party.”  
Section 213.111.

Where the language of the statute is clear and unambiguous, courts must give effect to the language used by the legislature. Hammond v. Municipal Correction Institute, 117 S.W.3d 130, 138 (Mo. App. W.D. 2003). This statute is sufficiently clear to avoid due process issues, and the ninety-day requirement would be no surprise to a layperson because that specific language is included twice in the letter to sue. Id. In addition, the MHRA’s statute of limitations has been strictly construed. Hill v. John Chezik Imports, 797 S.W.2d 528, 530 (Mo. App. 1990). Statutes of limitations are favored in the law and cannot be avoided unless the party seeking to do so brings himself within an exception enacted by the legislature. Id. They may be suspended or tolled only by specific disabilities of exceptions enacted by the legislature, and courts cannot extend those exceptions. Id.

Berry filed his first petition on August 24, 2022, which is ninety-two days after he received his Right-to-Sue letter on May 24, 2022. The statute emphasizes that an action “shall” be filed within ninety days.

Moreover, a right-to-sue letter from the EEOC does not give rise to a right-to-sue under the MHRA; the plaintiff must first receive a right-to-sue letter from the MCHR. Whitmore v. O’Connor Mgmt. Inc., 156 F.3d 796, 800 (8th Cir. 1998). As such, right-to-sue letters issued by the EEOC do not cure defects in filing an untimely MHRA action. Hammond, 117 S.W.3d at 136.

Berry has not demonstrated how a right-to-sue letter issued by the EEOC could breathe life into a dead MCHR claim. Id. Accordingly, Berry’s addition of federal claims does not cure the untimeliness of his claims under the MHRA.

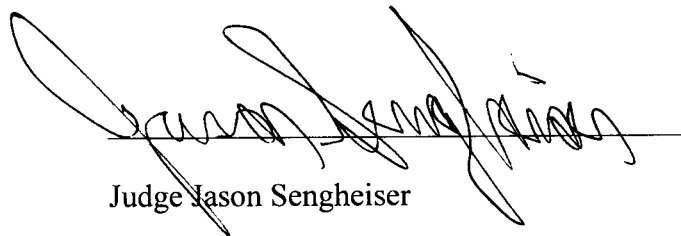


Because Section 213.111 is clear and unambiguous, and Berry himself admits he filed the petition outside of the statute of limitations, the action was not filed in a timely manner and the District's motion to dismiss should be granted as to the MHRA claims.

With respect to the Title VII and ADEA claims in Berry's second amended petition filed on December 19, 2022. Those claims were filed within ninety days of receiving the right to sue letter from the EEOC. See 42 U.S.C.A. § 2000e-5(f)(1). As a result, the motion to dismiss those claims as untimely filed is denied.

THEREFORE, it is Ordered and Decreed that Defendant's motion to strike is GRANTED without prejudice as to all of the MHRA claims. The motion is DENIED as to the Title VII and ADEA claims.

SO ORDERED

A handwritten signature in black ink, appearing to read "Jason Sengheiser", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke at the end.

Judge Jason Sengheiser

Date: March 27, 2023